

TO AMEND THE COLORADO RIVER STORAGE PROJECT ACT TO AUTHORIZE
THE USE OF THE ACTIVE CAPACITY OF THE FONTENELLE RESERVOIR

MARCH 14, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 2273]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2273) to amend the Colorado River Storage Project Act to authorize the use of the active capacity of the Fontenelle Reservoir, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORITY TO MAKE ENTIRE ACTIVE CAPACITY OF FONTENELLE RESERVOIR AVAILABLE FOR USE.

(a) **IN GENERAL.**—The Secretary of the Interior, in cooperation with the State of Wyoming, may amend the Definite Plan Report for the Seedskaadee Project authorized under the first section of the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act” (43 U.S.C. 620)) to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity (as may be defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations) of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of Fontenelle Dam to allow the active storage capacity of Fontenelle Reservoir to be used for those purposes for which the Seedskaadee Project was authorized.

(b) **COOPERATIVE AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary of the Interior may enter into any contract, grant, cooperative agreement, or other agreement that is necessary to carry out subsection (a).

(2) **STATE OF WYOMING.**—

(A) **IN GENERAL.**—The Secretary of the Interior shall enter into a cooperative agreement with the State of Wyoming to work in cooperation and collaboratively with the State of Wyoming for planning, design, related preconstruction activities, and construction of any modification of the Fontenelle Dam under subsection (a).

(B) **REQUIREMENTS.**—The cooperative agreement under subparagraph (A) shall, at a minimum, specify the responsibilities of the Secretary of the Interior and the State of Wyoming with respect to—

- (i) completing the planning and final design of the modification of the Fontenelle Dam under subsection (a);
- (ii) any environmental and cultural resource compliance activities required for the modification of the Fontenelle Dam under subsection (a) including compliance with—
 - (I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
 - (II) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
 - and
 - (III) subdivision 2 of division A of subtitle III of title 54, United States Code; and
- (iii) the construction of the modification of the Fontenelle Dam under subsection (a).

(c) FUNDING BY STATE OF WYOMING.—Pursuant to the Act of March 4, 1921 (41 Stat. 1404, chapter 161; 43 U.S.C. 395), and as a condition of providing any additional storage under subsection (a), the State of Wyoming shall provide to the Secretary of the Interior funds for any work carried out under subsection (a).

(d) OTHER CONTRACTING AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Interior may enter into contracts with the State of Wyoming, on such terms and conditions as the Secretary of the Interior and the State of Wyoming may agree, for division of any additional active capacity made available under subsection (a).

(2) TERMS AND CONDITIONS.—Unless otherwise agreed to by the Secretary of the Interior and the State of Wyoming, a contract entered into under paragraph (1) shall be subject to the terms and conditions of Bureau of Reclamation Contract No. 14-06-400-2474 and Bureau of Reclamation Contract No. 14-06-400-6193.

SEC. 2. SAVINGS PROVISIONS.

Unless expressly provided in this Act, nothing in this Act modifies, conflicts with, preempts, or otherwise affects—

- (1) the Act of December 31, 1928 (43 U.S.C. 617 et seq.) (commonly known as the “Boulder Canyon Project Act”);
- (2) the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000);
- (3) the Act of July 19, 1940 (43 U.S.C. 618 et seq.) (commonly known as the “Boulder Canyon Project Adjustment Act”);
- (4) the Treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, and supplementary protocol signed November 14, 1944, signed at Washington February 3, 1944 (59 Stat. 1219);
- (5) the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31);
- (6) the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.);
- (7) the Colorado River Basin Project Act (Public Law 90-537; 82 Stat. 885);
- or
- (8) any State of Wyoming or other State water law.

Amend the title so as to read:

A bill to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enable the use of the active capacity of the Fontenelle Reservoir.

PURPOSE OF THE BILL

The purpose of H.R. 2273, as ordered reported, is to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enable to use of the active capacity of the Fontenelle Reservoir.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2273, as amended, authorizes the Secretary of the Interior to enter into a cooperative agreement with the State of Wyoming to study, design, plan and perform construction that will enable the use of all active storage capacity at the Fontenelle Dam and Res-

ervoir. The bill requires Wyoming to pay for the full cost of such activities.

The Colorado River (River) is a major source of water supply for Wyoming and six other western states. The River is governed under the so-called "Law of the River," which is comprised of numerous federal laws, state compacts and agreements. The seven Colorado River Basin states and the federal government negotiated the Colorado River Compact of 1922, which defined the relationship between the upper basin states, where most of the River's water supply originates, and the lower basin states, which held most of the water demands. Since the seven states could not agree on how the waters of the Colorado River Basin should be allocated among them, then Secretary of Commerce Herbert Hoover suggested the basin be divided into an upper and lower half, with each basin having the right to develop 7.5 million acre-feet (maf) annually of river water. An acre foot of water is equivalent to approximately 326,000 gallons or enough to cover a football field with a foot of water. The Upper Colorado River Basin Compact of 1948 apportioned the upper basin's 7.5 maf among Colorado (51.75 percent), New Mexico (11.25 percent), Utah (23 percent), and Wyoming (14 percent). In addition, the Colorado River Storage Project of 1956 provided a comprehensive upper basin-wide water resource development plan and authorized the construction of dams, including the Seedskadee Project, for river regulation and power production, as well as several projects for irrigation and other uses.

Fontenelle Dam and Reservoir is the principal feature of the federal Seedskadee Project in southwest Wyoming. The current active storage capacity of the Reservoir is 260,000 acre feet. Since Wyoming has yet to use its full 14 percent Colorado River allotment, it has proposed expanding the active storage capacity of the Reservoir to 345,000 acre feet. Increasing active storage capacity at the Reservoir requires the installation of large stones, also known as "riprap," on parts of the upstream face of the earthen Dam. These stones keep water from eroding parts of the upstream face of the Dam.

Under H.R. 2273, Wyoming would be responsible for paying for the entire project, including study, design, planning, and construction of the riprap project. As amended, the bill no longer amends the Colorado River Storage Project to ensure that anything done under the auspices of this bill would not modify that law. This and other provisions of the bill are intended to reinforce the "beneficiaries pay" policy, which requires that those who solely receive the benefits of a project will pay for the project.

SECTION BY SECTION ANALYSIS OF THE BILL

Section 1, as amended, authorizes the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enter into any contract, grant or cooperative agreement with the State of Wyoming to carry out the study, design, planning, and construction activities to allow for the use of the Fontenelle Dam's entire active storage capacity. Any costs under this section shall be paid for by the State of Wyoming.

Section 2 provides a "Savings Provision" that intends to limit the bill from preempting or amending a number of federal statutes and Wyoming water law.

COMMITTEE ACTION

H.R. 2273 was introduced on May 12, 2015, by Congresswoman Cynthia Lummis (R-WY). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On June 25, 2015, the Subcommittee held a hearing on the bill. On February 2, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congresswoman Lummis offered an amendment designated #1 to the bill; it was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent on February 3, 2016.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2273—A bill to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enable the use of the active capacity of the Fontenelle Reservoir

H.R. 2273 would authorize the Bureau of Reclamation (BOR) to plan and construct a project to expand water storage at Fontenelle Dam and Reservoir in southwestern Wyoming. Because implementing H.R. 2273 would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 2273 would not affect revenues. Based on information from the BOR, however, CBO estimates that enacting the legislation would have an insignificant effect on the budget.

CBO also estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Under current law, the amount of water storage available to the State of Wyoming at the reservoir is the difference between full capacity and the lowest water level that allows all of the authorized purposes of the Fontenelle project to be performed. Under the bill, the BOR would coordinate with the State of Wyoming to design and construct modifications to the Fontenelle Dam and Reservoir

to allow the project to operate at a lower water level, thus expanding the amount of storage available to the state. H.R. 2273 also would require the state to contribute 100 percent of the cost to design and construct the project. (Those donations from the state to the federal government would be recorded in the budget as offsetting receipts and would subsequently be spent without further appropriation.)

H.R. 2273 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the State of Wyoming. Any costs incurred by the state to fund the project or participate in cooperative agreements would result from complying with conditions of federal assistance.

September 2, 2015, CBO transmitted a cost estimate for S. 1305, a bill to amend the Colorado River Storage Project Act to authorize the use of the active capacity of the Fontenelle Reservoir, as ordered reported by the Senate Committee on Energy and Natural Resources on July 30, 2015. The two pieces of legislation are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contacts for this estimate are Aurora Swanson (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office estimates that enactment of this bill "would have an insignificant effect on the budget." Because the State of Wyoming must pay 100 percent of the costs of the project, any payments to the United States would be considered offsetting receipts (a credit against direct spending).

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill, as ordered reported, is to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskaadee Project to enable to use of the active capacity of the Fontenelle Reservoir.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be du-

plicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

